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December 29, 2014

Via ECF

Hon. George B. Daniels
United States District Judge
United States District Court for the Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *Sokolow v. Palestine Liberation Organization et al.*
04-CV-397(GBD)(RLE)

Dear Judge Daniels:

I write in response to Plaintiffs' letter, dated December 23, 2014, in which they inform the Court of their intention to offer selected testimony of six depositions, including that of Mosaab Hassan Yousef. *See* DE 678. The Court should exclude the Yousef designations as well as the proffered page from a book written by Yousef (PTE 12) because they are not relevant and/or are based on inadmissible hearsay and speculation.

1. Torture by Hamas and Fatah of their Own Members

Plaintiffs have designated the following testimony:

And during that time [I was in prison], I discovered the brutality of Hamas torturing their own members. In fact not only the brutality of Hamas, also the brutality of Fatah torturing their own members...

DE 678-1 at 20. Testimony that Hamas and Fatah tortured their own members in prison is not relevant in a trial about whether the PLO and the PA are liable for acts of terrorism that injured or killed Americans. Testimony about Palestinians torturing Palestinians is also unduly prejudicial to the PA and the PLO.

2. Meetings involving Yousef's father, Yasser Arafat, Marwan Barghouti, and Others

Plaintiffs have designated the following question and answer:

Q. And, you say that you were present at meetings. Tell me what meetings you are referring to. What meetings were you



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present at relating to the second Intifada and the involvement of the PA and Hamas.

A. I was working as my father's assistant during the second Palestinian Intifada. And, I was part of few meetings, three or four meetings, with Yasser Arafat, Marwan Barghouti and other Palestinian faction representatives. The meetings that I was not in – present in the meeting, I had access to the report that my father wrote with his hand . . . which gave me access to information of what happened in every single meeting between my father and PLO and PA representatives.

Id. at 41-42. Testimony that there were a few meetings between various political leaders during an uprising that lasted more than four years is not relevant, particularly where, as here, there is no evidence that any of those meetings had anything to do with the attacks at issue in this case. Moreover, Yousef's testimony that he was "part of few meetings" was contradicted by his later testimony: "I never been to a full meeting all the way . . . I was not part of the meeting in person. In fact there was no place for me there . . . I was never part of the meeting." Yousef Tr. at 56:4-21.

3. The Arrest of Abdullah Barghouti

Plaintiffs have designated the following questions and answers:

Q. Have you met Abdula Barghouti?

A. Well, I never met him in person, like in a meeting. But I was at the location where he was arrested.

Q. Where was that?

A. It happened that that was just, the building next to our residence in Ramallah. We heard the – some fire, gunfire, and in a couple of minutes we received a phone call and it was Marwan Barghouti, telling my father to meet with him outside because [Jabril Rajoub], the PA were trying to arrest two Hamas people.

Now we didn't know who are the two Hamas people and it happened that it was Abdula Barghouti and Bila Barghouti and that was their second arrest.

Now, Marwan Barghouti was trying to force [Jabril Rajoub] not to arrest them, and this why he called my father.



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So now, there was a huge argument between [Jabril Rajoub], Marwan Barghouti and my father just steps away from where Bila and Abdula were hiding.

Now, the Palestinian Authority was afraid that if they get into the place, they get shot. And they were afraid at the same time to kill Hamas bomb maker.

So, I was in that area, in that sensitive situation, hearing all the argument, listening to Abdula saying things and threatening to kill anybody who gets into the apartment.

Finally, Marwan Barghouti had kind of deal with [Jabril Rajoub] on the side, I didn't know what they said and he talked to Abdula and had actually my father to talk to him, convince him to go with the forces, and they would release him afterwards.

Id. at 106-07. Any relevant portion of this testimony is inadmissible.

Yousef's testimony that "we received a phone call and it was Marwan Barghouti, telling my father to meet with him outside because [Jabril Rajoub], the PA were trying to arrest two Hamas people" (*id.* at 106:16-20) contains at least two layers of inadmissible hearsay: (1) Marwan Barghouti telling Yousef's father that the PA were trying to arrest two Hamas people, and (2) Yousef's father telling Yousef that Marwan Barghouti said that the PA were trying to arrest two Hamas people. Furthermore, Marwan Barghouti's purported belief that the PA were trying to arrest two Hamas people is based on either speculation or communications from someone else, which would be a third level of hearsay.

Yousef's testimony that "Marwan Barghouti was trying to force [Jabril Rajoub] not to arrest them, and this [is] why he called my father" (*id.* at 106:25-107:3) is based on speculation and/or hearsay.

Yousef's testimony that "the Palestinian Authority was afraid that if they get into the place, they get shot [a]nd they were afraid at the same time to kill Hamas bomb maker" (*id.* at 107:8-11) is based on speculation and/or hearsay.

Finally, and most importantly, Yousef's testimony that "Marwan Barghouti had kind of deal with [Jabril Rajoub] on the side, I didn't know what they said and he talked to Abdula and had actually my father to talk to him, convince him to go with the forces, and they would release him afterwards" (*id.* at 107:17-23) is based on two levels of hearsay and/or speculation. By testifying that he "didn't know what they said," Yousef admitted that he did not hear the



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conversation between Marwan Barghouti and Jabril Rajoub where they supposedly made a “deal” to arrest and then later release Abdullah Barghouti. His testimony about that “deal” is therefore based on either rank speculation or two layers of hearsay: (1) what Marwan Barghouti and Rajoub said to each other, and (2) what was later told to Yousef about what Marwan Barghouti and Rajoub said to each other. No hearsay exception would allow the admission of either layer of hearsay.

4. Yousef's Background

Plaintiffs’ designations also include background information about Yousef and his father. *See id.* at 7-8, 19-20. These designations are foundational and would be relevant only if the substantive designations discussed above were admitted. Because the designations about meetings with Yasser Arafat and the arrest of Abdullah Barghouti are not admissible, this Court should exclude all of Plaintiffs’ designations related to the Mosaab Hassan Yousef deposition.¹

5. Excerpt from Yousef's Book (PTE 12)

Finally, Plaintiffs have proffered a single, unredacted page from a book written by Yousef. *See* PTE 12. Yousef’s writings in the book are inadmissible hearsay. In fact, the line from the book that Plaintiffs presumably seek to admit – “One day, [Ahmed Barghouti], an aide to Marwan Barghouti, asked me to get him some explosives for several suicide bombers from Jenin” (*id.*) – contains Yousef’s own inadmissible hearsay as well as that of Ahmed Barghouti. Moreover, even if this were not two levels of hearsay, an undated, unspecified request to Yousef to get explosives cannot be tied to any of the incidents at issue in this case. Thus, in addition to being presented through hearsay, the exhibit is irrelevant. The trial exhibit should therefore be excluded.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian A. Hill".

Brian A. Hill

¹ In the event the Court admits any of Plaintiffs’ proposed designations, Defendants will notify Plaintiffs and the Court of any counter-designations that they will seek to admit.